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Freeborn & Peters

January 16, 2003

VIA FEDERAL EXPRESS

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423-0001

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JAN 17 2003
MAIL
MANAGEMENT
STB

**Re: Surface Transportation Board Docket No. AB-6 (Sub-No. 399X);
The Burlington Northern and Santa Fe Railway Company Abandonment
of Reynolds, Nebraska to Endicott, Nebraska**

Attorneys at Law

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Dear Secretary Williams:

Enclosed please find an original and 10 copies of the Response of The Burlington Northern and Santa Fe Railway Company To United Transportation Union Motion for a Stay and Endicott Clay Products Company's Opposition to Reinstatement of Notice of Exemption, for filing with the Board in the above referenced matter.

Please acknowledge receipt of this material by date stamping the enclosed copy of this letter and returning it to me in the enclosed self-addressed stamped envelope.

Chicago

Spr. 1d

Sincerely,



Brian Nettles

/bn
Enclosures

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Public Record

BEFORE THE
SURFACE TRANSPORTATION BOARD

207060

DOCKET NO. AB-6 (Sub-No. 399X)



THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY -
ABANDONMENT EXEMPTION - IN JEFFERSON COUNTY, NEBRASKA

RESPONSE OF THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY
TO UNITED TRANSPORTATION UNION MOTION FOR A STAY AND ENDICOTT CLAY
PRODUCTS COMPANY'S OPPOSITION TO REINSTATEMENT OF NOTICE OF
EXEMPTION

On January 6, 2003, the Surface Transportation Board ("the Board") issued an Order herein staying this proceeding but authorizing The Burlington Northern and Santa Fe Railway ("BNSF") until January 17, 2003 to demonstrate that the line qualifies for the exemption. BNSF opposes the United Transportation Union Motion for a Stay filed by the United Transportation Union ("UTU") on December 18, 2002.

In responding to the motion, BNSF will respond to the erroneous claim that local traffic has moved between milepost 127.83, near Reynolds, and milepost 117.63, near Endicott, in Jefferson County, Nebraska.

On January 14, 2003, Endicott Clay Products Company ("Endicott Clay") filed its Opposition to Reinstatement of Notice of Exemption ("Opposition to Reinstatement"). BNSF opposes the Opposition to Reinstatement of Notice of Exemption. In responding to the motion, BNSF will show that rerouting the Reynolds-Endicott line to Table Rock, Nebraska and Superior, Nebraska is both economical and efficient. BNSF respectfully urges the Surface Transportation Board ("Board") to deny both of the motions.

BEFORE THE
SURFACE TRANSPORTATION BOARD

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BACKGROUND

On November 20, 2002, BNSF filed a verified Notice of Exemption under 49 C.F.R. § 1152 Subpart F – Exempt Abandonments to abandon a 10.8 mile line of railroad between milepost 127.83, near Reynolds, and milepost 117.03, near Endicott, in Jefferson County, Nebraska. On December 19, 2002, the UTU filed an unverified motion for a stay of the proceeding, erroneously claiming that local traffic has moved along the proposed abandonment within the last two years (“Motion for a Stay”). The pleading was received on December 26, 2002. Unfortunately, due to the holiday schedule, BNSF was unable to respond before the end of 2002. On January 6, 2003, the Board granted UTU’s Motion for a Stay, but allowed BNSF until January 17, 2003 to demonstrate that this line does qualify for the abandonment. *The Burlington Northern and Santa Fe Railway Company – Abandonment Exemption – In Jefferson County Nebraska, STB docket No. AB-6 (Sub-No. 399X)(STB served on January 7, 2003)*. On January 14, 2003, Endicott Clay Products Company filed an Opposition to Reinstatement of Notice of Exemption, claiming that the proposed rerouting of overhead traffic to Table Rock, Nebraska is not economical and efficient.

In this Response, BNSF demonstrates that the Reynolds-Endicott line does qualify for exempt abandonment because there has been no local traffic on the line for at least 2 years and the overhead traffic moving on the line can be efficiently and economically re-routed. This Response is supported by the Verified Statement of Richard A. Batie [attached and incorporated herein.]

**THE UNITED TRANSPORTATION UNION INCORRECTLY CONCLUDED
THAT LOCAL TRAFFIC HAS MOVED ALONG THE PROPOSED ABANDONMENT
WITHIN THE LAST TWO YEARS**

According to 49 C.F.R. § 1152.50(b), BNSF is required to certify that no local traffic has moved over the line for at least 2 years and any overhead traffic on the line can be rerouted over other lines for an exempt abandonment. BNSF's Notice of Exemption did so certify. *See the Amended Verification of Richard A. Batie, signed December 13, 2002, The Burlington Northern and Santa Fe Notice of Exemption AB-6 (Sub-No. 399X) at page 5.* In UTU's Motion for a Stay, UTU erroneously concluded that local traffic has operated over the 10.8 mile segment between Reynolds, Nebraska and Endicott, Nebraska. The UTU offers two examples to support its conclusion. One, on Mondays and Thursdays, a crew operated out of Wymore, Nebraska and runs westward approximately 147 miles to Red Cloud, Nebraska. *See Motion for a Stay at 1 -2 and Verificatied of Richard A Batie at 2.* On Tuesdays and Fridays, a train is operated out of Red Cloud, Nebraska back to Wymore. *Id.* A third example UTU cited was on a crew operated between Wymore, Nebraska and Table Rock, Nebraska on Wednesdays. *See Motion for a Stay at 2.* However, this traffic movement is actually east of the proposed abandonment and does not travel over the Reynolds to Endicott line. *See Verificated Statement of Richard A. Batie at 2.*

In this instance, UTU confuses the term "local traffic" with the term "overhead traffic." Overhead traffic consists of shipments that are not originated or terminated at any point a particular line segment. Thus, in order to qualify as local traffic, the above mentioned crews must either originate or terminate traffic along the 10.8 mile segment between Reynolds, Nebraska and Endicott, Nebraska. Since the Wymore, Nebraska to Red Cloud Nebraska and the Red Cloud, Nebraska to Wymore, Nebraska traffic movements relied upon by UTU do not originate

or terminate along the 10.8 mile segment, they are overhead traffic, not local traffic. In this instance, overhead traffic will be rerouted via Table Rock, Nebraska and Superior, Nebraska. *The Burlington Northern and Santa Fe Notice of Exemption AB-6 (Sub-No. 399X) at pages 3 and 5 of the Environmental Report.*

BNSF's Notice of Exemption included the Verified Statement of Richard Batie certifying that there has been no local traffic on this line. That verification stands. This Reply is further supported by the Verified Statement of Richard Batie, attached hereto, which again certifies that there has been no local traffic on the subject line.

BNSF'S REROUTE OF OVERHEAD TRAFFIC OVER THE REYNOLDS-ENDICOTT LINE IS ECONOMICAL AND EFFICIENT

Endicott Clay, in its Opposition to Reinstatement of Notice of Exemption, states that there are substantial issues regarding whether the rerouting of overhead traffic over the Reynolds-Endicott line is economic and efficient. Endicott Clay is located east of the eastern terminus and ships its products westbound over the Reynolds-Endicott segment. *See Opposition to Reinstatement at 5.* Endicott Clay assumes that the current western route through the Reynolds to Endicott line is the most efficient and economical route for the shipments of its products. *Id. at 5 and 7.*

However, Endicott Clay incorrectly assumes that rerouting the Reynolds, Nebraska to Endicott, Nebraska route to Table Rock, Nebraska is not economic and efficient. Approximately 88% of all of Endicott Clay's products that were handled by BNSF in 2001 and the first eleven months of 2002 went to Chicago where they were connected to eastern markets. *See Verified Statement of Richard A. Batie at 3-4.* Currently, Endicott Clay Products are shipped west across the Reynolds to Endicott line to Superior, Nebraska. *Id. at 4.* After that, they go south to Newton, Kansas and then east towards Chicago and eastern rail connections. *Id.* The total miles that

Clay's products have to travel to Chicago using the Reynolds-Endicott route is 873 miles. *Id.* Following the abandonment of the Reynolds to Endicott line, the Endicott Clay Products' rail shipments will be rerouted through Table Rock, Nebraska. From there, the shipments will go to Lincoln, Nebraska and then to Chicago, Illinois, where they will be connected to eastern carriers. *Id.* The total miles to Chicago thorough the Table Rock, Nebraska reroute is 657 miles, a reduction of approximately 25% of total miles for 88% of Endicott Clay products shipments. *Id.* The reroute through Table Rock will lead to significant savings is fuel and handling costs. *Id at 4-5.*

CONCLUSION

UTU mistakenly concluded that local traffic moved along the 10.8 mile segment between Reynolds, Nebraska and Endicott, Nebraska in the last two years. The examples that UTU cite relate solely to movements of overhead traffic, not local traffic. Since there has been no local traffic that has moved over the proposed abandonment in the last two years and the overhead traffic will be rerouted via Table Rock, Nebraska and Superior, Nebraska, BNSF has met its requirements pursuant to 49 C.F.R. 1152.50(b).

The reroute though Table Rock, Nebraska and Superior, Nebraska is both economical and efficient. Endicott Clay incorrectly assumes that the Reynolds to Endicott line is the most efficient and economical handling of their rail traffic. The reroute through Table Rock will decrease Endicott Clay's travel to Chicago by approximately 25%. This will lead to increased savings in fuel and handling costs.

Therefore, BNSF respectfully requests the Board to deny UTU's Motion for a Stay, and to reinstate BNSF's Notice of Exemption; such reinstatement to be effective as of November 20,

2002 (the date BNSF originally filed the Notice of Exemption). BNSF also respectfully requests the Board to deny Endicott Clay's Opposition to Reinstatement of Notice of Exemption.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Michael Smith", written over a horizontal line.

Michael Smith
Freeborn & Peters
311 S. Wacker Drive, Suite 3000
Chicago, IL 60606-6677

Attorney for The Burlington
Northern and Santa Fe Railway
Company

Date: January 16, 2003

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Response Of The Burlington Northern and Santa Fe Railway To United Transportation Union Motion For a Stay has been served on this 16th day of January, 2003, via first-class, postage pre-paid mail upon the following:

Daniel R. Elliot, III
Associate General Counsel
United Transportation Union
14600 Detroit Avenue
Cleveland, Ohio 44107

Thomas F. McFarland
Thomas F. McFarland, P.C.
208 South LaSalle Street, Suite 1890
Chicago, IL 60604-11940


Michael Smith

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

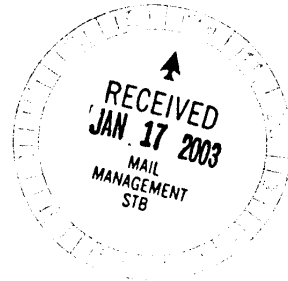
BURLINGTON NORTHERN AND SANTA FE
RAILWAY COMPANY - ABANDONMENT
EXEMPTION - IN JEFFERSON COUNTY, NEBRASKA

Docket AB-6
(Sub No. 399X)

VERIFIED STATEMENT

OF

RICHARD A. BATIE



My name is Richard A. Batie, and I am employed by The Burlington Northern and Santa Fe Railway Company (BNSF) as Manager, Shortline Development in the Network Development Department. My business address is 2600 Lou Menk Drive, 2nd Floor, Fort Worth, Texas, 76131. I have worked with line abandonments since January 1982 when I was named Manager, Branch Line Evaluation for Burlington Northern Railroad. Burlington Northern Railroad merged with the Atchison Topeka and Santa Fe Railway in September 1995 to become BNSF. I am now responsible for review of line abandonments for BNSF.

This statement is filed in response to the December 18, 2002 United Transportation Union (UTU) Motion For A Stay, the January 14, 2003 Thomas F. McFarland Opposition To Reinstatement Of Notice Of Exemption and the January 13, 2003 Verified Statement of Ryan Parker filed in the abandonment proceeding of BNSF's line of railroad from Milepost 127.83 near Reynolds to Milepost 117.03 near Endicott in Jefferson county, Nebraska as filed by BNSF in Docket AB-6 (Sub No. 399X).

Background

On November 20, 2002 BNSF filed a Notice of Exemption to abandon the 10.80 mile Reynolds to Endicott, Nebraska line. UTU filed a Motion For A Stay of the abandonment on December 18, 2002 and the Surface Transportation Board (STB) issued a decision on January 6, 2003 for dismissal of the proceeding pending a demonstration by BNSF that the line qualifies for an out of service exemption for abandonment. Thereafter, Thomas F. McFarland filed an Opposition To Reinstatement Of Notice Of Exemption on behalf of Endicott Clay Products of Endicott, Nebraska and Ryan Parker, Vice President Finance for Endicott Clay Products filed a Verified Statement in the proceeding.

The Reynolds to Endicott, Nebraska line qualifies for an out of service exemption as the line has not had any local (originated or terminated or interchanged) traffic on it for over two years and the overhead traffic which uses this line can be re-routed. BNSF customers are located east of Reynolds and near Endicott but there are no customers, stations or interchange points located between the milepost limits of the proposed Reynolds to Endicott abandonment. Therefore, there are no local customers or interchange points affected by the proposed abandonment. The overhead traffic which utilizes the line can be re-routed.

Present BNSF train service travels over the Reynolds to Endicott line for overhead movement four times per week. A BNSF train originates at Wymore, Nebraska on Monday and runs westward approximately 147 miles to Red Cloud, Nebraska. On Tuesday, the train is operated from Red Cloud back to Wymore. On Wednesday, the train operates eastbound approximately 22 miles from Wymore to Pawnee and returns to Wymore that same day. On Wednesday the train does not operate over the Reynolds to Endicott line as it travels east of the line. On Thursday and Friday the train repeats the Wymore to Red Cloud and Red Cloud back to Wymore trips. The two round trips per week between Wymore and Red Cloud and back to Wymore have the train traveling over the Reynolds to Endicott line four times per week handling overhead traffic.

Following abandonment of the Reynolds to Endicott line, the overhead traffic which travels over the Reynolds to Endicott line will be re-routed via Table Rock and Superior, Nebraska. This re-routing qualifies the Reynolds to Endicott line for the out of service exemption for abandonment.

UTU Motion For A Stay

The UTU statement apparently mistakes overhead traffic for local traffic. I agree with the UTU statement that BNSF operates over the subject trackage four days per week. However, this operation is limited to overhead traffic only. No local traffic traverses the line segment. All overhead traffic is planned to be re-routed via Table Rock and Superior.

The UTU Motion For A Stay is without merit. There are no local customers or interchange points on the line proposed for abandonment and the overhead traffic which utilizes the line can be re-routed. I have personally verified these facts by an interview with local personnel as well as a review of BNSF records maintained in the ordinary course of business.

Thomas F. McFarland's Opposition To Reinstatement Of Notice Of Exemption

Thomas F. McFarland, an attorney representing Endicott Clay Products raises the issue of whether traffic that is moving overhead to the Reynolds to Endicott line, including Endicott Clay Products' traffic, can be rerouted efficiently and economically. Mr. McFarland also requests that BNSF be required to file an application to abandon the line.

Endicott Clay Products operates a brick and tile manufacturing plant near Endicott, Nebraska. The plant is located approximately 1.6 miles west of the BNSF station of Endicott. Although the majority of Endicott Clay Products traffic is handled by trucks, a smaller amount of their shipments go outbound by rail. During 2001 and the

first eleven months of 2002 approximately 88% of Endicott Clay Products rail shipments were handled by BNSF to Chicago where they connected with eastern carriers which took them to eastern markets.

Following abandonment of the Reynolds to Endicott line, Endicott Clay Products' rail shipments will be rerouted through Table Rock, Nebraska rather than their current routing through Superior, Nebraska. The current routing of the eastbound Endicott Clay Products' rail shipments is west to Superior, Nebraska; south to Newton, Kansas; and then east to Chicago and the eastern rail connections. Following the abandonment of the Reynolds to Endicott line the Endicott Clay Products rail shipments will travel east to Table Rock, then to Lincoln, Nebraska and then to Chicago to connect with eastern carriers. The new routing following the Reynolds to Endicott abandonment will reduce the rail mileage on most of Endicott Clay Products rail shipments including all those shipments going to eastern destinations. This new routing will save approximately 25% of the rail miles west of Chicago.

With the rerouting of the Endicott Clay Products and the savings which will take place in fuel and handling costs, the Endicott Clay Products rail traffic will be handled more efficiently and economically.

Verified Statement of Ryan Parker

Ryan Parker states in his Verified Statement: "We shipped 291 cars by rail in 2001 and 292 carloads in 2002". Mr. Parker goes on to make the assumption that the Endicott Clay Products rail traffic can be most efficiently and economically handled westbound through Superior rather than eastbound through Table Rock as is planned by BNSF following the abandonment of the Reynolds to Endicott line. As pointed out previously, this is not the case. By handling the Endicott Clay Products traffic through Table Rock to the east rather than Superior to the west, the total miles by rail from Endicott to Chicago will be reduced from 873 miles through Superior to 657 miles through Table Rock, a reduction of 24.7%. This savings will benefit the environment by

reducing the amount of fuel used to transport Endicott Clay Products rail shipments to market.

Conclusion

BNSF is proposing the abandonment of a line of railroad that has a small amount of overhead traffic. The overhead traffic which currently utilizes the Reynolds to Endicott line will be rerouted more efficiently and more economically following the proposed abandonment.

VERIFICATION

STATE OF TEXAS)

COUNTY OF TARRANT)

Richard A. Batie, Manager Shortline Development, Network Development, The Burlington Northern and Santa Fe Railway Company, being duly sworn, deposes and says that he has read the foregoing affidavit and knows the facts asserted therein and that the same are true as stated.

Richard A. Bette

Richard A. Batie

Subscribed and sworn to before me,
this 15th day of January, 2003.

Julia E. Amador
Notary Public

